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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT L. STEVENS,

Petitioner,

vs.

GATEWAY TRANSPORTATION COMPANY and LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

—Consolidated With—

AIELT EVANS,

Petitioner,

vs.

MAISLIN TRANSPORT, LTD. (formerly GATEWAY TRANSPORTATION COMPANY, INC.) and LOCAL UNION 710 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF RESPONDENT COMPANY IN OPPOSITION

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QUESTION PRESENTED

The Respondent Company adopts the statement of the Question Presented to the Court as set forth in the brief of Respondent Union in opposition.

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OPINION BELOW

The decision of the Court of Appeals appears as pages 7-16a of Petitioners' Appendix C as is reported officially at 696 F.2d 500 (1982).[1]

JURISDICTION

The judgment of the Court of Appeals was entered on December 22, 1982. Rehearing was denied on January 20, 1983 (Petit. App. 17-18a). The petition for Writ of Certiorari was filed on April 19, 1983. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The Statement Of The Case contained in the Brief of Respondent Union In Opposition, which is not materially different from the Statement Of The Case as set forth on pages 4-5 of the Petition for Writ of Certiorari is accurate and hereby adopted by Respondent Company.

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[1] At the time of the filing of the *Stevens* case Respondent Company was known as Gateway Transportation Company. Thereafter its name was changed to Maislin Transport of Delaware, Inc., which is controlled by Maislin Transport, Ltd., Respondent in the *Evans* case.

REASONS FOR DENYING THE WRIT

The Supreme Court in *Hoosier Cardinal & Mitchell* held that in determining which Statute of Limitation to apply where an employee seeks to vacate an arbitration decision arrived at pursuant to a collective bargaining contract, courts should seek those Statutes most analogous to the cause presented, keeping in mind that national interests require the "relatively rapid disposition of labor disputes".[2] The Seventh Circuit Court of Appeals in its decision[3] considered the applicability of the various Statutes referred to in Appendices E through I of the Petition for Writ of Certiorari. In its decision it clearly follows the Supreme Court's direction to apply the statute most analogous to the cause before the Court and in keeping with the federal policy of resolving labor disputes in an expeditious manner.

The Seventh Circuit has considered and rejected Petitioners' argument that one of the Statutes referred to applies directly to their cause of action. Chapter 83, Section 16 Illinois Statutes[4] is not an applicable and specific statute of limitations. Petitioners' causes are not actions "on awards of arbitration". In addition, Chapter 83, Section 16, does not meet one of the important criterion of federal policy, namely its application would not result in the rapid disposition of labor disputes.

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[2] *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56 at 63 (1981), *International Union, UAW v. Hoosier Cardinal Corp.*, 368 U.S. 696 at 707 (1976).

[3] Appendix C to Petition for Writ of Certiorari.

[4] Appendix G to Petition for Writ of Certiorari.

The fact that the Illinois legislature has enacted Chapter 10, Section 112 Illinois Statutes[5] covering the vacating of an award, clearly denotes that it distinguishes the vacating of an award from actions "on awards of arbitration". Just as Chapter 83, Section 16 is not an applicable and specific statute of limitations, Chapter 10, Section 112 and Section 10(b) of the National Labor Relations Act (29 U.S.C. § 160(a) and (b)), are not applicable and specific statutes of limitations. The Seventh Circuit was therefore required to seek from available statutes of limitations the one most analogous to the cause presented and the statute or statutes most likely to effectuate federal policy relative to labor disputes.

Clearly the Illinois statute which refers to the vacating of awards as differentiated from the Illinois statute referring to an action "on an award" is more analogous to Petitioners' stated causes of action. It also most closely comports with federal policy relating to the need for the expeditious disposition of labor disputes. Section 10(b) is the Statute of Limitations contained in the National Labor Relations Act relating to the bringing of charges before the N.L.R.B. by employees alleging that discipline or discharge has been for reasons other than just cause.[6] Even if held applicable, the Petitioners' causes of action would be barred by it also.

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[5] Appendix F to Petition for Writ of Certiorari.

[6] The grounds for unfair labor practices are set forth in the Act and are not relevant here other than that they are specific reasons for disciplinary action other than just cause and are therefore analogous to claims brought by employees based on collective bargaining contracts which also allege that the discipline complained about is for reasons other than just cause.

It is most respectfully submitted that Petitioners have failed to state grounds upon which their Petition may be granted pursuant to Rule 17 of the Supreme Court's Rules. There is no conflict set forth between the various Circuits regarding compliance with the Supreme Court's decision in *Mitchell*. While other Circuit Courts may have been able to locate available statutes in pertinent states more specifically applicable to the cause presented there, the Seventh Circuit in this case, having reviewed all available Statutes of Limitations, did in fact apply the most analogous statutes and the ones most likely to result in the expeditious disposition of labor disputes in keeping with federal policy. No question is presented in this case which warrants further proceedings before the Supreme Court. In that connection the issues raised in *Flowers*[7] and *Del Costello*[8] which are already pending before the Supreme Court, are dissimilar from those raised by the Petitioners in the instant matter. Indeed, Petitioners do not even refer to *Flowers* and *Del Costello* in their Petition.

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[7] *Flowers v. Local 2602 of United Steelworkers*, 671 F.2d 87 (2nd Cir. 1981), *cert. granted*, ... U.S. ....., 103 S. Ct. 442, 74 L. Ed. 2d 599 (1982).

[8] *Del Costello v. International Brotherhood of Teamsters*, 679 F.2d 879 (4th Cir. 1982), *cert. granted*, ... U.S. ....., 103 S. Ct. 442, 74 L. Ed. 2d 599 (1982).

CONCLUSION

Wherefore, respondent company respectfully submits that the Petition for writ of certiorari should be denied.

Respectfully submitted,

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